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C O N F I D E N T I A L SECTION 01 OF 02 BOGOTA 000431

SIPDIS

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TAGS: PHUM PTER KJUS PINR CO

SUBJECT: FISCALIA CLOSES CHENGUE MASSACRE CASE AGAINST
RETIRED ADMIRAL QUINONEZ

REF: A. 01 BOGOTA 8188

1B. 01 BOGOTA 2647

1C. 02 BOGOTA 1349

1D. 02 STATE 65982

Classified By: Ambassador William B. Wood for reasons 1.4 (b)
and (d).

Summary

1. (C) The Fiscalía announced it has closed its criminal case against retired Rear Admiral Rodrigo Quinonez for his alleged complicity in the January 2001 paramilitary massacre at Chengue. The head of the Fiscalía's Human Rights Unit told Embassy officials that Quinonez's case was handled by a special Supreme Court Prosecutor who decided to close it because of lack of justiciable evidence. In 2003, the Procuraduria had ordered that Quinonez and four others be dismissed from the armed forces for their alleged involvement in the atrocity. Differing standards of proof in administrative and criminal processes accounted, at least in part, for the conflicting rulings. End Summary.

Background

2. (C) On January 7, the Office of the Prosecutor General ("Fiscalia") announced it had closed its investigation of retired Rear Admiral Rodrigo Quinonez for suspected complicity in the January 2001 paramilitary massacre in the village of Chengue, Sucre Department, where paramilitaries used large stones and machetes to kill 27 unarmed civilians. Quinonez, who commanded the Colombian Navy's First Brigade at the time, had been charged with dereliction of duty ("omission") for allegedly doing nothing to prevent the massacre after he was alerted that it might take place. Several soldiers under Quinonez's command were charged with facilitating the atrocity by providing paramilitaries with intelligence and equipment.

3. (C) The criminal investigation of the Chengue massacre was flawed from the start and marred by threats and violence. The Fiscalía's Human Rights Unit lacked a regional presence at the time, creating delays in the initial inquiry and complicating the long, drawn-out investigation. Many elements of the Colombian military were less than cooperative, and parallel investigations of several other large-scale paramilitary massacres put significant strains on the Unit's resources and personnel. Two members of the Fiscalía's Corps of Technical Investigators (CTI) -- the Fiscalía's in-house detective force -- disappeared while working undercover on the case in April 2001, and are presumed dead. A third CTI investigator working on the case was murdered in February 2002. In August 2001, suspected paramilitaries murdered the senior prosecutor in charge of the case in front of her home in the departmental capital of Sincelejo. The investigation was also plagued by allegations evidence tampering, threats against witnesses, and suspected paramilitary infiltration of the Sincelejo prosecutor's office.

Inspector General's Office Sanctions Quinonez

4. (C) On December 16, 2003, the Inspector General's Office ("Procuraduria") -- which has the power to impose administrative, but not criminal, sanctions -- ordered that Quinonez, Captains Oscar Eduardo Saavedra and Camilo Martinez, and Sergeants Euclides Bossa and Ruben Dario Rojas be dismissed from the armed forces for their responsibility for events at Chengue. The Procuraduria ruled that Quinonez, Saavedra, and Martinez failed to take appropriate measures to prevent the massacre after local police alerted their command to the presence of paramilitaries in the area. Bossa and Rojas were dismissed for providing the paramilitaries with weapons and helping them recruit guerrilla deserters. All five were prohibited from holding public offices for a period of five years and banned from access to military facilities. The dismissals and additional sanctions were confirmed on internal appeal in September 2004. Quinonez had already been "severely reprimanded" by the Procuraduria in the 1990s for

allegedly directing anti-communist death squads in the Santander Department river port city of Barrancabermeja, then dominated by the National Liberation Army (ELN). A military tribunal ruled Quinonez was not criminally responsible for those alleged offenses.

Meeting with Fiscalia

15. (C) On January 13, Embassy officials met with Elba Beatriz Silva, current director of the Human Rights Unit, who explained that although the Unit investigated the Chengue case, Quinonez's rank required that he be prosecuted by one of the Fiscalia's special Supreme Court Prosecutors ("Fiscales Delegados ante la Corte"), who handle cases in which the Supreme Court has primary jurisdiction. According to Silva, the senior prosecutor decided to drop the case against Quinonez for lack of sufficient evidence to achieve a criminal conviction. Silva said this was a result of paucity of witnesses willing to testify, the disappearance of other witnesses, and the murders of various investigators. Verdicts of "not guilty" in several Chengue-related prosecutions advanced by the Human Rights Unit also undermined the case against Quinonez. Prosecutor General Luis Camilo Osorio personally signed off on the Supreme Court Prosecutor's decision.

Different Standards of Proof

16. (C) Despite working from the same evidence, the Fiscalia and the Procuraduria came to different conclusions because they were imposing distinct legal provisions with different standards of proof. The Procuraduria is able to sanction individuals administratively -- with dismissal as the most drastic sanction -- on the basis of far less evidence and certainly less than the Fiscalia needs to prove a criminal violation. For example, in the Quinonez case, the Fiscalia had to prove to the rough equivalent of the U.S. "beyond a reasonable doubt" standard that Quinonez knew of the impending massacre. The Procuraduria, on the other hand, only needed to demonstrate by a preponderance of the evidence that Quinonez "should have known" about the risk of a massacre. The Procuraduria did not have to prove that Quinonez actually did know of the risk of a massacre.

WOOD